

### **Remarks/Arguments**

Applicants have received and carefully reviewed the Final Office Action of the Examiner mailed March 24, 2008 and the Advisory Action mailed June 23, 2008. Currently, claims 1-36 remain pending. Claims 1-36 have been rejected. In this amendment, claims 1, 4-7, 12, 14-17, 22, 25-26, and 31-36 have been amended. Favorable consideration of the following remarks is respectfully requested. This paper is being filed with a Request for Continued Examination.

#### ***Claim Rejections – 35 USC § 112***

In paragraph 2 of the Final Office Action, claims 1-11 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the Examiner rejected the claims as lacking antecedent basis for the limitation “the proximal section” in claim 1. With this Amendment, Applicant has amended claim 1 to recite “a proximal section”. As such, there is believed to be proper antecedent basis for all limitations of claim 1.

#### ***Claim Rejections – 35 USC § 102***

In paragraph 4 of the Final Office Action, claims 1, 4-11, 22, and 25-36 were rejected under 35 U.S.C. 102(b) as being anticipated by Vale et al. (U.S. Publication No. 2002/0058963). After careful review, Applicant must respectfully traverse this rejection.

Turning to claim 1, which recites:

1. (Currently Amended) A medical device, comprising:  
an elongated tubular member having a proximal segment, a distal segment,  
and an inner lumen disposed at least partially therethrough; and  
a dilator tip catheter having a proximal end insertable at least in part  
within the distal segment;  
wherein [[the]] a proximal section of the dilator tip catheter has an outer  
diameter and the distal segment of the elongated tubular member has an inner  
diameter smaller than the outer diameter of the proximal section of the dilator tip  
catheter;  
wherein a proximal end of the dilator tip catheter is positioned at least in  
part within the distal segment of the elongated tubular member such that the distal  
segment expands around at least a portion of the proximal section of the dilator tip  
catheter.

Without conceding the correctness of the rejection, Applicant has amended the phrase “dilator tip” of claim 1 to “dilator tip catheter” to clarify the phrase and to further prosecution.

In paragraph 11 the Final Office Action, the Examiner appears to indicate that the arguments previously provided were not persuasive because the claims recite “a dilator **tip**” and not a “dilator catheter”. In paragraph 12, the Examiner states that the claim requires that the dilator **tip** has a proximal end. In paragraph 13, the Examiner again emphasizes the use of the term “**tip**” in the claims. In paragraph 14, the Examiner states

“applicants arguments based on the diameter of the catheter are not persuasive because examiner at no point has used the diameter of catheter (11) in the rejections. Again, to be perfectly clear, applicant claims a **TIP** and not a catheter.”

As amended, claim 1 recites “dilator tip catheter”. As such, Vale et al. does not appear to teach or suggest the claimed “dilator tip catheter”.

Instead, Vale et al. appears to teach a retrieval catheter 70 having a tapered distal tip 71. A centering catheter 11 is inserted within the retrieval catheter 70. However, the proximal section of the centering catheter 11 presumably has an outer diameter less than the inner diameter of the retrieval catheter 70. In addition, presumably the retrieval catheter 70 does not expand around at least a portion of the proximal section of the centering catheter 11.

As the Examiner is aware, “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). “The identical invention must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). (See MPEP § 2131).

In view of the foregoing, Vale et al. does not teach each and every element of claim 1 in as complete of detail. Additionally, there appears to be no motivation to modify the device of Vale et al. to arrive at the claimed invention. Therefore, for at least these reasons, claim 1 is believed to be patentable over Vale et al. For similar reasons and others, claims 4-11, which depend from claim 1 and include additional limitations, are believed to be patentable over Vale et al.

Turning to claim 22, which recites:

22. (Currently Amended) A medical device, comprising:  
an elongated tubular member having a proximal segment, a distal segment,  
and an inner lumen disposed at least partially therethrough, the distal segment

having an inner diameter; and

a dilator tip catheter insertable at least in part within the distal segment, the dilator tip catheter having a proximal section having an outer diameter greater than the inner diameter of the distal segment of the elongated tubular member forming an interference fit therebetween, a distal section, and an inner lumen disposed therethrough;

wherein the interference fit between the dilator tip catheter and the distal segment of the elongated tubular member causes the distal segment of the elongated tubular member to be radially expanded.

As discussed previously, nowhere does Vale et al. appear to teach or suggest, “a dilator tip catheter insertable at least in part within the distal segment, the dilator tip catheter having a proximal section having an outer diameter greater than the inner diameter of the distal segment of the elongated tubular member forming an interference fit therebetween, a distal section, and an inner lumen disposed therethrough” or “wherein the interference fit between the dilator tip catheter and the distal segment of the elongated tubular member causes the distal segment of the elongated tubular member to be radially expanded”, as recited in claims 22. Therefore, for similar reasons discussed above, as well as others, claim 22 is believed to be not anticipated by Vale et al. For similar reasons and others, claims 25-30, which depend from claim 22 and include additional limitations, are believed to be not anticipated by Vale et al.

Turning to claim 31, which recites:

31. (Currently Amended) A system for retrieving an intravascular device disposed within a body lumen, comprising:  
an embolic protection filter disposed about an elongated wire;  
a retrieval device configured to radially expand and encompass the intravascular filter therein, said retrieval device comprising an elongated tubular member having a proximal segment, a distal segment, and an inner lumen adapted to slidably receive the elongated wire; and  
a dilator tip catheter having a proximal section insertable at least in part within the distal segment urging the distal segment of the elongated tubular member to radially expand, said dilator tip catheter configured to engage a stop disposed about the elongated wire.

As discussed previously, nowhere does Vale et al. appear to teach or suggest, “a dilator tip catheter having a proximal section insertable at least in part within the distal segment urging the distal segment of the elongated tubular member to radially expand, said dilator tip catheter configured to engage a stop disposed about the elongated wire”, as recited in claim 31. Therefore, for similar reasons discussed above, as well as others, claim 31 is believed to be not

anticipated by Vale et al.

Turning to claim 32, which recites:

32. (Currently Amended) A system for retrieving an intravascular device disposed within a body lumen, comprising:  
an embolic protection filter disposed about an elongated wire;  
a retrieval device configured to radially expand and encompass the intravascular filter therein, said retrieval device comprising an elongated tubular member having a proximal segment, a distal segment, and an inner lumen adapted to slidably receive the elongated wire; and  
a dilator tip catheter insertable at least in part within the distal segment, the dilator tip catheter including a proximal section configured to tightly fit within the distal segment, a distal section configured to engage a stop disposed about the elongated wire, and an inner lumen disposed therethrough configured to slidably receive the elongated wire;  
wherein the proximal section of the dilator tip catheter has an outer diameter and the distal segment of the elongated tubular member has an inner diameter smaller than the outer diameter of the proximal section of the dilator tip catheter;  
wherein a proximal end of the dilator tip catheter is positioned at least in part within the distal segment of the elongated tubular member such that the distal segment expands around the proximal section of the dilator tip catheter.

Nowhere does Vale et al. appear to teach or suggest, “a dilator tip catheter insertable at least in part within the distal segment, the dilator tip catheter including a proximal section configured to tightly fit within the distal segment, a distal section configured to engage a stop disposed about the elongated wire, and an inner lumen disposed therethrough configured to slidably receive the elongated wire”, “wherein the proximal section of the dilator tip catheter has an outer diameter and the distal segment of the elongated tubular member has an inner diameter smaller than the outer diameter of the proximal section of the dilator tip catheter”, or “wherein a proximal end of the dilator tip catheter is positioned at least in part within the distal segment of the elongated tubular member such that the distal segment expands around the proximal section of the dilator tip catheter”, as recited in claim 32. Therefore, for similar reasons discussed above, as well as others, claim 32 is believed to be not anticipated by Vale et al.

Turning to claim 33, which recites:

33. (Currently Amended) A medical device, comprising:  
an elongated tubular member having a proximal segment, a distal segment, and an inner lumen disposed at least partially therethrough, the distal segment formed of an elastic material such that the distal segment is radially expandable between an unexpanded state and a radially expanded state; and

a dilator tip catheter including a proximal section, a proximal end of the dilator tip catheter inserted at least in part within the distal segment, wherein the proximal section of the dilator tip catheter urges the distal segment of the elongated tubular member into the radially expanded state.

As discussed previously, nowhere does Vale et al. appear to teach or suggest, “a dilator tip catheter including a proximal section, a proximal end of the dilator tip catheter inserted at least in part within the distal segment, wherein the proximal section of the dilator tip catheter urges the distal segment of the elongated tubular member into the radially expanded state”, as recited in claim 33. Therefore, for similar reasons discussed above, as well as others, claim 33 is believed to be not anticipated by Vale et al. For similar reasons and others, claims 34-36, which depend from claim 33 and include significant additional limitations, are believed to be not anticipated by Vale et al. and Applicant respectfully requests withdrawal of the rejection.

#### ***Claim Rejections – 35 USC § 103***

In paragraph 6 of the Office Action, claims 2 and 23 were rejected under 35 U.S.C. 103(a) as being unpatentable over Vale et al. (U.S. Publication No. 2002/0058963) in view of Nilsson (U.S. Patent No. 5,873,851). For similar reasons given above, as well as others, claims 2 and 23, which depend from claims 1 and 22 and include additional limitations, are believed to be patentable over the cited references.

In paragraph 7 of the Office Action, claims 3, 12, 14-21, and 24 were rejected under 35 U.S.C. 103(a) as being unpatentable over Vale et al. (U.S. Publication No. 2002/0058963) in view of Salahieh et al. (U.S. Publication No. 2004/0127936). After careful review, Applicant must respectfully traverse this rejection.

Turning to claim 12, which recites:

12. (Currently Amended) A medical device, comprising:  
an elongated tubular member having a proximal segment, a distal segment, and an inner lumen disposed at least partially therethrough, the distal segment including at least a portion including a braid, the distal segment configured to radially expand between an unexpanded state and a radially expanded state; and  
a dilator tip catheter having a proximal section inserted at least in part within the portion of the distal segment including the braid, wherein the proximal section of the dilator tip catheter urges the distal segment of the elongated tubular member into the radially expanded state.

As discussed previously, nowhere does Vale et al. appear to teach or suggest, “a dilator tip catheter having a proximal section inserted at least in part within the portion of the distal segment including the braid, wherein the proximal section of the dilator tip catheter urges the distal segment of the elongated tubular member into the radially expanded state”, as recited in claim 12. Furthermore, nowhere does Salahieh et al. appear to remedy the noted shortcomings of Vale et al. Therefore, for similar reasons discussed above, as well as others, claim 12 is believed to be patentable over Vale et al. in view of Salahieh et al.

For similar reasons and others, claim 3, which depends from claim 1, claims 14-21, which depend from claim 12, and claim 24, which depends from claim 22, are believed to be patentable over Vale et al. and Salahieh et al.

In paragraph 8 of the Office Action, claim 13 was rejected under 35 U.S.C. 103(a) as being unpatentable over Vale et al. (U.S. Publication No. 2002/0058963) in view of Salahieh et al. (U.S. Publication No. 2004/0127936) and further in view of Nilsson (U.S. Patent No. 5,873,851). For similar reasons given above, as well as others, claim 13, which depends from claim 12, is believed to be patentable over Vale et al. and Salahieh et al. and further in view of Nilsson.

### ***Conclusion***

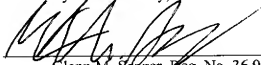
In view of the foregoing, all pending claims are believed to be in a condition for allowance. Reexamination and reconsideration are respectfully requested. Issuance of a Notice of Allowance in due course is anticipated. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

Respectfully submitted,

Thomas E. Broome

By their Attorney,

Date: July 25, 2008

  
Glenn M. Soager, Reg. No. 36,926  
CROMPTON, SEAGER & TUFTE, LLC  
1221 Nicollet Avenue, Suite 800  
Minneapolis, Minnesota 55403-2420  
Tel: (612) 677-9050